

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/19/0866

Re: Property at 33 Blackwood Street, Anniesland, Glasgow, G13 1AL (“the Property”)

Parties:

Mr Neil Ross, 19 Napier Crescent, Strathaven, ML10 6XU (“the Applicant”)

Ms Siobhan Lafferty, 33 Blackwood Street, Anniesland, Glasgow, G13 1AL (“the Respondent”)

Tribunal Members:

Neil Kinnear (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that

Background

This is an application for an eviction order dated 12th March 2019 and brought in terms of Rule 109 (Application for an eviction order) of *The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017* as amended.

The Applicant seeks an eviction order in relation to the Property against the Respondent, and provided with his application copies of the private residential tenancy agreement, notice to leave, and section 11 notice.

The Respondent had been validly served by sheriff officers with the notification, application, papers and guidance notes from the Tribunal on 15th April 2019, and I was provided with the execution of service.

Case Management Discussion

A Case Management Discussion was held on 16th May 2019 at Glasgow Tribunals Centre, 20 York Street, Glasgow. The Applicant appeared, and was not represented. The Respondent also appeared, and was not represented.

I was invited by the Applicant with reference to the application and papers to grant the order sought on ground 12 of Schedule 3 to the *Private Housing (Tenancies) (Scotland) Act 2016*.

The notice to leave dated 21st January 2019 stated in Part 4 thereof that an application will not be submitted to the Tribunal for an eviction order before 25th February 2019.

The Tribunal noted that the Applicant had not provided any information on when the notice was given to the Respondent, and the Applicant responded by indicating that he had left the notice at the Property on 4th February 2019.

Statement of Reasons

In terms of Section 51 of the *Private Housing (Tenancies) (Scotland) Act 2016* ("the Act"), the Tribunal is to issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies.

Section 52(2)(3) and (4) of the Act provide:

"(2) The Tribunal is not to entertain an application for an eviction order if it is made in breach of—

(a) subsection (3), or

(b) any of sections 54 to 56 (but see subsection (4)).

(3) An application for an eviction order against a tenant must be accompanied by a copy of a notice to leave which has been given to the tenant.

(4) Despite subsection (2)(b), the Tribunal may entertain an application made in breach of section 54 if the Tribunal considers that it is reasonable to do so."

Section 54 of the Act provides:

"(1) A landlord may not make an application to the First-tier Tribunal for an eviction order against a tenant using a copy of a notice to leave until the expiry of the relevant period in relation to that notice.

(2) The relevant period in relation to a notice to leave—

(a) begins on the day the tenant receives the notice to leave from the landlord, and

(b) expires on the day falling—

(i) 28 days after it begins if subsection (3) applies,

(ii) 84 days after it begins if subsection (3) does not apply.

(3) This subsection applies if—

(a) on the day the tenant receives the notice to leave, the tenant has been entitled to occupy the let property for not more than six months, or

(b) the only eviction ground, or grounds, stated in the notice to leave is, or are, one or more of the following—

- (i) that the tenant is not occupying the let property as the tenant's home,
- (ii) that the tenant has failed to comply with an obligation under the tenancy,
- (iii) that the tenant has been in rent arrears for three or more consecutive months,
- (iv) that the tenant has a relevant conviction,
- (v) that the tenant has engaged in relevant anti-social behaviour,
- (vi) that the tenant associates in the let property with a person who has a relevant conviction or has engaged in relevant anti-social behaviour.

(4) The reference in subsection (1) to using a copy of a notice to leave in making an application means using it to satisfy the requirement under section 52(3).”

Section 62 of the Act provides:

“(1) References in this Part to a notice to leave are to a notice which—

- (a) is in writing,
 - (b) specifies the day on which the landlord under the tenancy in question expects to become entitled to make an application for an eviction order to the First-tier Tribunal,
 - (c) states the eviction ground, or grounds, on the basis of which the landlord proposes to seek an eviction order in the event that the tenant does not vacate the let property before the end of the day specified in accordance with paragraph (b),
- and

(d) fulfils any other requirements prescribed by the Scottish Ministers in regulations.

(2) In a case where two or more persons jointly are the landlord under a tenancy, references in this Part to the tenant receiving a notice to leave from the landlord are to the tenant receiving one from any of those persons.

(3) References in this Part to the eviction ground, or grounds, stated in a notice to leave are to the ground, or grounds, stated in it in accordance with subsection (1)(c).

(4) The day to be specified in accordance with subsection (1)(b) is the day falling after the day on which the notice period defined in section 54(2) will expire.”

The start date of the tenancy was 3rd December 2018, so as at the date when the Respondent received the notice to leave, she had been entitled to occupy the Property for less than 6 months. That being so, the relevant period in relation to the notice to leave was 28 days in terms of section 54 of the Act.

In terms of section 62 of the Act, the notice to leave required to specify the day on which the Applicant expected to become entitled to make an application for an eviction order to the Tribunal. That date was the day falling after the relevant period of 28 days had expired, which relevant period commenced on the day when the Respondent was given the notice to leave.

The notice was given to the tenant some 21 days before the date specified in the notice to leave specifying the date when the Applicant expected to become entitled to make application to the Tribunal for an eviction order. Accordingly, the notice to leave fails to comply with the provisions of the Act, and is significantly short of the relevant period required.

In those circumstances, the notice to leave is invalid, and accordingly the Tribunal cannot entertain this application.

Decision

In these circumstances, and for these reasons, the Tribunal dismissed the application.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

N Kinnear

Legal Member/Chair

16/05/19

Date